

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA**

In re: : Chapter 13
Barry L. Penepacker, :
Debtor. : Bankruptcy No. 17-12111-MDC

ORDER

AND NOW, upon consideration of the Application for Compensation and Reimbursement of Expenses dated October 3, 2017 (“the Application”),¹ in which Michael D. Hess (the “Applicant”) requests the allowance of compensation in the amount of \$2,530.00 and the reimbursement of expenses in the amount \$34.43 (the “Fee Amount”).

AND, this Court entered an Order dated October 5, 2017 (the “Dismissal Order”),² dismissing the Debtor’s chapter 13 bankruptcy case.

AND, the Dismissal Order did not provide for this Court’s retention of jurisdiction pursuant to 11 U.S.C. §349(b)(3) over any undistributed chapter 13 plan payments in the possession of the Trustee, *see, e.g., In re Matthews*, Bky. No. 10-16869, 2012 WL 33213 (Bankr. E.D. Pa. Jan. 6, 2012); *In re Lewis*, 346 B.R. 89 (Bankr. E.D. Pa. 2006).

AND, the deadline to have filed a notice of appeal of the Dismissal Order was October 19 2017. Fed. R. Bankr. P. 8002(a)(1).

AND, entry of the Dismissal Order “revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.” 11 U.S.C. §349(b)(3).

It is hereby **ORDERED and DETERMINED** that:

¹ Bankr. Docket No. 27.

² Bankr. Docket No. 30.

1. Due to the failure of any party to appeal the Dismissal Order, that ruling is final. *In re Lewis*, 346 B.R. 89, 101 n.12 (Bankr. E.D. Pa. 2006).

2. Because the Applicant failed to take any action to preserve his rights prior to the entry of the Dismissal Order, this Court can determine the absence of cause for overriding the presumptive return of the unclaimed funds to the Debtor. *See, e.g., In re Matthews*, Civ. No. 12-414, 2012 WL 3263599, *4 (E.D. Pa. Aug. 9, 2012).

3. Lacking jurisdiction to consider the Application, the Application is **DENIED**. *See* L.B.R. 2016-1(f) (governing procedure for disposition of fee applications without a hearing).

Dated: December 21, 2017



MAGDELINE D. COLEMAN
UNITED STATES BANKRUPTCY JUDGE

Michael D. Hess, Esquire
Burke & Hess
1672 Manheim Pike
Lancaster, PA 17601-3028

William C. Miller, Esquire
Chapter 13 Trustee
1234 Market Street, Suite 1813
Philadelphia, PA 19107

United States Trustee
833 Chestnut Street, Suite 500
Philadelphia, PA 19107